NO. 80-388

In The
Supreme Court Of The United States

OCTOBER TERM, 1980

WILLIAM H. STEPNEY, JR.,
Petitioner

vs.

STATE OF CONNECTICUT,
Respondent

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF CONNECTICUT

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

RESPONDENT,
STATE OF CONNECTICUT

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I. STATEMENT OF THE CASE

The respondent does not contest, for the purposes of the petition for certiorari, the statement of the case as set forth in the brief of the petitioner.

II. ARGUMENT

THE SUPREME COURT OF CONNECTICUT DID NOT ERR IN DECIDING THAT AN ERRONEOUS INSTRUCTION ON INTENT GIVEN TO A GRAND JURY WAS NOT VIOLATIVE OF THE PETITIONER'S CONSTITUTIONAL RIGHTS.

As more fully set forth in the brief of the petitioner, the Connecticut Supreme Court determined that this Court's holding in *Sandstrom v. Montana*, 442 U.S. 510, 99 S.Ct. 2450, 61 L.Ed.2d 39 (1979) was inapplicable in the context of Connecticut's statutory grand jury. *State v. Stepney*, 41 Conn.L.J. 52, p. 1, June 24, 1980. The upshot of this determination is that an indictment which has been returned by a grand jury improperly instructed on the presumption of intent is not subject to dismissal and does not violate the defendant's constitutional rights. The resolution of this issue by the Supreme Court of Connecticut is correct for two reasons.

Firstly, it is clear from the exhaustive analysis undertaken in the opinion of the Connecticut Supreme Court in the matter at hand, that the unique nature and function of the grand jury in Connecticut precludes a finding that an indictment is invalid due to the grand juror's being charged contrary to the dictate of *Sandstrom v. Montana*, supra. It is the respondent's position that *Sandstrom* is applicable only under circumstances similar to those before this Court in that case. The

Connecticut grand jury's role in the case at bar is so dissimilar to the petit jury's duty in *Sandstrom* as to render the holding in *Sandstrom* inapposite.

Support for the respondent's contention is implicit in *Kentucky v. Whorton*, 441 U.S. 786, 99 S.Ct. 2088, 60 L.Ed.2d 640 (1979). Therein, the requirement of a presumption of innocence instruction set out in *Taylor v. Kentucky*, 436 U.S. 478, 98 S.Ct. 1930, 56 L.Ed.2d 468 (1978) was limited to the facts of *Taylor*. In the same manner *Sandstrom* is inapplicable to the instant case.

Secondly, the respondent maintains that whatever harm is engendered by the instruction to the grand jury at issue here, is vitiated by a subsequent conviction by a properly instructed petit jury. The concurring opinions of Justices Stewart and Rehnquist in *Rose v. Mitchell*, 443 U.S. 545, 99 S.Ct. 2993, 3009-3012, 61 L.Ed. 739 (1979) mandates such a conclusion. Contrary to the petitioner's observation, the majority in *Rose v. Mitchell*, supra, examined the role of the grand jury there solely because of a claim of racial discrimination in the selection of the grand jury. The pernicious effect of such discrimination on our judicial system and our society as a whole warrants attacks on criminal convictions permitted in *Rose*. A violation of *Sandstrom* does not.

Finally, the respondent would call to this Court's attention the case of *United States v. Scheufler*, 599 F.2d 893, 895-896 fn.2 (9th Cir. 1979). Therein, it was asserted that "even comment before the grand jury on a defendant's refusal to testify would not be grounds for quashing an otherwise valid indictment."

III. CONCLUSION

For the foregoing reasons and analysis it is respectfully requested that the petition be denied.

Respondent, STATE OF CONNECTICUT

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